CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31047/96
by Rose-Marie BERG
against Sweden

The European Court of Human Rights (First Section), sitting on 14 March 2000 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mr B. Zupančič,
Mrs W. Thomassen,
Mr T. Panţîru, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 13 March 1996 and registered on 18 April 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Swedish national, born in 1972 and residing in Nordmaling. She is represented before the Court by Mr Lennart Hane, a lawyer practising in Stockholm.

A. Particular circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 28 December 1993 the applicant gave birth to a daughter, T. After having received a report from the child welfare centre in February 1994 indicating certain shortcomings of the applicant's care of T., the Social Welfare Committee (*socialnämnden*) of Nordmaling started an investigation into the matter. It made several visits to the applicant's home. The applicant was also provided with various supporting measures, including the assistance of a home help, a family guidance counsellor and a so-called contact family. Furthermore, for some time the applicant and her daughter were staying with a foster family and for another period of time they were admitted to a children's psychiatric clinic.

The Social Welfare Committee's investigation ended with the conclusion that the applicant's care of T. was deficient and constituted a risk to T.'s health and development. As a consequence, T. should be placed with foster parents. As the applicant had discontinued some of the supporting measures she had been provided with, the Committee considered that the placement could not be realised on a voluntary basis. In March 1995, it therefore applied to the County Administrative Court (*länsrätten*) of Västerbotten for a care order concerning T. The application was made pursuant to Sections 1 and 2 of the Act with Special Provisions on the Care of Young Persons (*lagen med särskilda bestämmelser om vård av unga*; hereinafter "the 1990 Act").

The County Administrative Court held a hearing in the case, during which it heard the applicant, her counsel, T.'s counsel and representatives of the Social Welfare Committee. It also heard evidence from four witnesses proposed by the applicant. T.'s counsel supported the Committee's application.

By judgment of 11 April 1995, the County Administrative Court rejected the Social Welfare Committee's application. Having noted that the application was based on alleged deficiencies in the applicant's physical care of her daughter and in the emotional contact between them, the court gave the following reasons for its judgment:

(Translation)

> "With respect to [the applicant's] practical care of [T.], the investigation does not show that there are such serious deficiencies as regards personal hygiene, diet and clothing that the child could be considered badly cared for. Accordingly, there is no reason to order care under [the 1990 Act] on this ground.
>
> As regards the other aspects of the care of [T.], the [court] first notes that [the applicant] gives the impression of being immature and apparently has difficulties in fully understanding her responsibilities as a parent and the needs

> of a small child. According to assessments made during the investigation, this has led to certain reactions from [T.]. She has, *inter alia*, avoided eye contact with [the applicant] on some occasions, dissociated herself from her and failed to react when confronted with strangers or when separated [from the applicant]. It is true that these could be considered as worrying signs, but they do not express, in [the court's] view, any permanent disturbance in [T.'s] ability to relate to other people or other injuries. The question is then whether [the applicant's] difficulties as a parent will henceforth entail such deficiencies in the care of [T.] that there is a palpable risk of impairment of the health and development of the child. In this respect, [the court] notes that [the applicant] has demonstrated that she is able to accept help and that an improvement has been brought about through the assistance of [the Children's Psychiatric Clinic]. She has also a continuous positive attitude to [the Children's Psychiatric Clinic] and is prepared to accept its assistance. Furthermore, the family's situation is generally more favourable since [the applicant] has found employment and [T.] is with the childminder during working hours. According to the childminder, who gave a reliable impression when giving evidence, the care is working well and [T.'s] behaviour during the day and when brought to and taken home from the childminder does not differ from that of other children. Further, the prospects of a positive development of the relationship between [the applicant] and [T.] will probably be better after the demanding period of infancy. [The applicant's] social network, principally her parents who have realised her need of support, also contributes in making things easier for [the applicant] and provides [T.] with normal relationships with other people. Even if [the applicant] has been very negative towards the efforts of the family guidance counsellor, she has demonstrated that she is aware of her difficulties and has not categorically rejected the assistance from the social authorities. Consequently, in the [court's] view, it cannot be considered hopeless for the social authorities to attain a contact based on mutual trust with [the applicant] and provide her with continuous supporting measures trough persons whom she can regard as role models. In these circumstances, [the court] considers that [the applicant's] situation does not entail the clear risk of impairment to [T.'s] development which is required for compulsory measures under [the 1990 Act]."

The Social Welfare Committee appealed to the Administrative Court of Appeal (*kammarrätten*) in Sundsvall, which held a further hearing in the case, during which it heard the same persons as the inferior court. Two of the witnesses who had appeared before the County Administrative Court gave evidence also before the Administrative Court of Appeal. In addition, the appellate court heard evidence from a psychologist proposed by the Social Welfare Committee. The psychologist, who gave expert evidence, had not met the applicant or her daughter. T.'s counsel recommended the appeal be granted.

On 31 May 1995 the Administrative Court of Appeal reversed the appealed judgment and, accordingly, ordered that T. be taken into care. The court gave the following reasons:

(Translation)

> "The Administrative Court of Appeal shares the County Administrative Court's view that the physical care of [T.] is not deficient in such a way as to give reason for a care order under the [1990 Act].

> What has emerged from the statements in the case, principally the report submitted by [the Children's Psychiatric Clinic] and the report on the situation in the home from the family guidance counsellor but also the report from the psychologist [E.S.] acting as expert witness for the Social Welfare Committee in the Administrative Court of Appeal, is that serious shortcomings exist in the care of [T.] as regards [the applicant's] ability to communicate and be emotionally approachable as well as her ability to console; in brief, shortcomings in the relationship between [the applicant] and [T.] which, given [T.'s] age, presumably will lead to a palpable risk to [T.'s] health and development.
>
> The investigation into the case reveals that the support given to [the applicant] has resulted in mother and daughter beginning to interact well, but that [the applicant] still would require considerable support for a long period of time in the form of, *inter alia*, a family guidance counsellor in the home and closer contact with [the Children's Psychiatric Clinic] – along with the support of the childminder and other parts of her social network, most of all her parents – in order for [T.] to receive the requisite care and attention. The alternative is that [T.] may bond with another adult in a foster family who, during the first important years of her life, would be able to give her the loving care she needs without contact with the mother being broken.
>
> As concerns [the applicant's] ability to meet [T.'s] care needs with the help of supporting measures it should be noted that [the applicant], in many respects in her contacts in her working life and with [the Child Psychiatric Clinic] and the Social Welfare Committee, has shown immaturity and dependence on others and also an ambivalent attitude towards the various supporting measures. Against this background and since both the help offered and the help requested have materialised only to a limited extent, there is reason to assume that [the applicant] does not possess the ability or the strength to utilise voluntarily the immense support required to give [T.] the necessary care. Instead, in order to secure such care for [T.], it will probably be necessary to place her outside her home with foster parents in accordance with the Social Welfare Committee's care plan. As [the applicant] does not consent to this and there are such deficiencies in the care of [T.] that there is a palpable risk of her health and development being impaired, the requisite circumstances exist for [T.] to be taken into care under Section 1, subsection 2 and Section 2 of the [1990 Act]."

On 29 September 1995 the Supreme Administrative Court (*Regeringsrätten*) refused the applicant leave to appeal.

On 8 June 1995 the Social Welfare Committee decided to place T. with foster parents in Bygdeå, about 100 km from Nordmaling. The decision was upheld on appeal by the County Administrative Court on 11 October 1995 and by the Administrative Court of Appeal on 27 October 1995. The Supreme Administrative Court refused leave to appeal on 22 February 1996.

On 28 November 1995, in its review of the case under the provisions of Section 13 of the 1990 Act, the Social Welfare Committee decided to prolong the public care of T. The decision was based on a report dated 6 November 1995, drawn up by officers of the

Committee. The report concluded that T. was in need of further care and it was not considered that the applicant's situation had changed in such a positive way as to give cause for moving T. back home. The applicant was still considered incapable of taking care of T.

The applicant appealed against the decision. The County Administrative Court decided that T.'s further need for care should be examined at the Children and Young People's Psychiatric Clinic at Umeå Hospital.

Before the County Administrative Court the applicant submitted that, on a voluntary basis, she was now willing to accept the continuation of T.'s placement in a family home during a transitional period, and further that she admitted that she was in need of support in taking care of T. The Social Welfare Committee argued that T. was still in need of care under the 1990 Act. T.'s legal counsel also opposed to a termination of the care order.

In December 1995 the applicant requested that the foster family placement of T. be terminated. On 31 January 1996 the Social Welfare Committee rejected this request.

Following the termination of the examination at the clinic at Umeå Hospital the County Administrative Court ordered the termination of the care under the 1990 Act by judgment of 21 January 1997. In its reasons the court stated that the decision of 2 May 1995 to take T. into care was, *inter alia*, based on a statement by a psychologist which concluded that the first three years are a very important period in a child's life. In considering the question of termination the court gave special weight to the fact that T. was now older than three years. The court also considered it to be important that the applicant was now aware that she was in need of support in her care of T. and that she understood that T. could move back home only after a transitional period and not immediately. The court concluded that the applicant at the time was not lacking the ability to take care of T. in such a way that T.'s needs of emotional security and stimulus would be seriously neglected in the case of a reunion between mother and daughter.

The judgment was appealed against by the Social Welfare Committee. On 24 February 1997 the Administrative Court of Appeal rejected the appeal for the following reasons:

(Translation)

> "The initial care order for [T.] was based on the fact that, in several aspects, there were serious shortcomings in [the applicant's] ability to provide [T.] with the care she needed in view of her age and development, *inter alia* with regard to the possibilities of letting [T.] adequately interact with an adult. Although the matter of interaction does not seem as crucial today, the facts of the case – especially the results of the child psychiatric examination and the hearing of the expert, [B.H.] – indicate that there is still a substantial lack in the ability of [the applicant] to provide care. These shortcomings can be assumed to be of such a character as to lead to a palpable risk to [T.'s] health and development, should steps not be taken in order to handle them.
>
> The Social Welfare Committee has, in this respect, made the assessment that adequate care for [T.] cannot be provided in her own home but that it is necessary for [T.] to stay with a foster family while [the applicant] *inter alia*

through continued contacts with [the Children's Psychiatric Clinic] gains strength and develops so that she on the one hand learns to better understand and interpret [T.'s] signals, one the other hand is motivated and realises as well the need as the ability to accept the relatively extensive supporting measures necessary to eliminate the shortcomings in her ability to provide care. The reason for this is to make it possible for [the applicant], with continuing supporting measures, to take care of [T.] in her own home after a gradual termination of the placement with foster parents.

In particular as regards the implementation of a transfer from the foster home to the own home the expert has highlighted the risks for [T.'s] health and development of a more abrupt termination of the ongoing placement with foster parents and has recommended that such a transfer in order not to harm [T.] be done gradually over a lengthy period with, for example, mother and child staying at [the Children's Psychiatric Clinic] and with measures supporting interaction, and that it is then continued with personal and other supporting steps in the own home.

[The applicant], who has now accepted that there are shortcomings in her ability to provide care and that, at present, there is also a risk for [T.] being harmed if she were to be taken care of in [the applicant's] home, has also expressed that today she is willing to consent to continued foster home placement for an undetermined period of time and that she accepts also otherwise the supporting measures in the form of contacts with [the Children's Psychiatric Clinic], personal assistance in the own home etc. necessary in order for her to be able to give her daughter the care she needs.

The previous decision by [the Administrative Court of Appeal] as regards the need for a care order was made in the light of the fact that [the applicant] was deemed to lack the ability and strength to utilise voluntarily the support required to give [T.] necessary care in her own home and that a placement outside the home was therefore necessary. At that time [the applicant] did not consent to that form of care.

Taking into account what has previously occurred and not least the results of the psychiatric examination and the hearing of the expert, there are also today grounds for doubt as regards [the applicant's] ability to realise the need for necessary support in order to be able to provide care for [T.] in her own home. In this respect no decisive change seems to have taken place as regards [the applicant's] own personal development since [T.] was taken into care but [T.] is still in need of care outside her own home. Care in a foster home is necessary today not only because a sudden discontinuation in itself would be harmful for [T.] but foremost because [T.] cannot be expected to receive the necessary care in her own home even if [the applicant] is given special support. In contrast to the previous situation, however, [the applicant] now consents to a placement of her daughter with a foster home for a transitional period.

In the light of [the applicant's] attitude as regards the question of further care outside her own home it must first be assessed whether the necessary care for [T.] can be provided on a voluntary basis. These measures would consist of a

placement with foster parents until further notice and of an immediately initiated continuing and active work by the Social Welfare Committee in order to motivate and try to make [the applicant] realise as well [T.'s] need of care as her own possibilities to meet this need with the help of active support. By a gradually more intensified right of access, [T.] can be transferred to her own home when both [T.] and [the applicant] are deemed mature enough to handle that.

The question at present is not, however, whether [the applicant] has the ability or the strength to meet the necessary extensive and interfering measures needed as well before a transfer is possible as, if it is carried out, after [T.] is placed again in her own home, but primarily whether [the applicant] is likely to interfere with an ongoing voluntary placement with foster parents before it is possible to ascertain that the necessary care can be provided for [T.] in her own home by [the applicant] with the support provided by society.

In this respect it should first be noted that she herself as well as her father, who has continuously as counsel for her daughter acted actively in concert with [the applicant], clearly expressed that she accepts a continued placement with foster parents and that she realises that an expeditious transfer would be detrimental to [T.]. Furthermore, it should be taken into account that [the applicant's] actions so far evidently have been characterised to a relatively large extent by passivity. The reason to why various measures have not been commenced or have been terminated seems, accordingly, have been that [the applicant] by evasion or negligence to act has let the matter come to nothing. On the other hand she has not actively terminated or refused various help efforts. It seems that neither has [the applicant] consciously acted in a way she would understand as being harmful to her daughter. Therefore it may reasonably be possible to conclude that [the applicant] now, having experience also from compulsory care, does not reject the demands caused by the needs of [T.]. The [court] therefore comes to the conclusion that an overall assessment indicates that the consent expressed by [the applicant], however at a late stage of the proceedings, should be accepted as adequate. Under these circumstances the [court] also finds that it is possible on a voluntary basis to provide [T.] with the necessary care outside her own home until it is possible to return [T.] to [the applicant]. This means that there are no longer grounds for compulsory care."

On 2 June 1997 the applicant revoked the power of attorney for her father, who had until then been representing her in the matter of the public care of T.

On 21 July 1997 the applicant's father requested the Social Welfare Committee to decide on a gradual termination of [T.'s] placement with the foster parents. On 27 August 1997 the Committee concluded that he was no longer representing his daughter and decided to respond to him accordingly.

On 3 January 1998 the applicant's father requested the County Administrative Court to secure the implementation of the judgment of the Administrative Court of Appeal of 24 February 1997. On 7 January 1998 the court rejected the request, finding no legal basis therefor.

The applicant's father appealed to the Administrative Court of Appeal. On 23 January 1998 the appellate court, noting the provisions of Chapter 21, Section 7 of the Parental Code, referred the case back to the inferior court since it had not examined the question whether the applicant's father was still legally representing her.

It appears that T. is still living with foster parents.

B. Relevant domestic law

a. The 1990 Act

Care pursuant to the 1990 Act shall be provided for a young person under 18 years of age if one of the situations referred to in Sections 2 or 3 of the Act is at hand and the necessary care presumably cannot be given to the young person with the consent of the person having custody of him and, if the young person himself has reached the age of 15 years, with his own consent. According to Section 2 of the Act care shall be provided if there is a palpable risk of impairment of the health or development of the young person due to ill-treatment, exploitation, lack of care or any other condition in the home.

Decisions on whether to place a young person under public care are made by the County Administrative Court following an application from the Social Welfare Committee.

The concept of health or development in the 1990 Act was taken directly from the previous legislation in this area as a description of a person's physical or mental health or development. The concept refers to situations where the young person is risking his physical health or where mental suffering is inflicted because of the situation in the home.

According to the *travaux préparatoires* to the 1990 Act the expression palpable or apparent risk (*påtaglig risk*) was deemed well suited for indicating at what level a compulsory care order could be justified. A subjective assumption that a young person is in danger is not enough and irrelevant circumstances such as public order must not be the basis of a care order. There has to be concrete or apparent circumstances supporting the fact that there is a risk for the young person's physical or mental health (cf. Government Bill 1989/90:28, pp. 63 and 107).

According to Section 6 of the 1990 Act the Social Welfare Committee may order the immediate taking into care of a young person ("provisional care order") if he probably needs to be provided with care under this Act and a court decision on the matter cannot be awaited owing to the risk to the young person's health or development or because the continuing inquiry can be seriously impeded or further measures prevented. If such a decision by the Social Welfare Committee cannot be awaited, an order on taking into public care may be made by the Chairman of the Committee. A provisional care order shall be put before the County Administrative Court which shall rule on whether the order shall be upheld awaiting the Court's judgment regarding the application for public care.

According to Section 13 of the 1990 Act the Social Welfare Committee shall maintain close observation of the care provided for a young person by virtue of the Act. When a care order has been made according to the Act, the responsibility for the young

person is taken over by the social authorities. It is the Social Welfare Committee that decides about the necessary care. If care has been provided under Section 2 of the Act, the Committee must *ex officio* review, at least once every sixth months, whether care under the Act is still necessary.

According to Section 24 of the 1990 Act the County Administrative Court may, on being petitioned by the Social Welfare Committee, prohibit, for a specified period or until further notice the removal of a minor from a foster home by the person having custody of him, if there is a palpable risk of the young person's health or development being impaired if he is separated from the home (removal prohibition). The Committee shall, according to Section 26, review, at least once every three months, whether a removal prohibition is still necessary.

According to the 1990 Act the Social Welfare Committee may issue a temporary removal prohibition if i) it is probable that a removal prohibition is needed, and ii) a court decision concerning a removal prohibition cannot be awaited, in view of the risk of the young person's health or development (Section 27). If the Committee has decided on a temporary removal prohibition, the decision shall be submitted to the County Administrative Court (Section 28). If the court confirms the decision, the Committee shall apply for a removal prohibition within two weeks of the court's decision (Section 29). A temporary removal prohibition ceases to apply i) if a removal prohibition has not been applied for within two weeks of the court's decision, or ii) when the court determines the question of a removal prohibition (Section 30). If necessary in view of the purpose of a removal prohibition or temporary removal prohibition, the Social Welfare Committee may decide how the right of access to the young person to which a parent or other custodians may be entitled is to be exercised (Section 31).

According to Section 41 of the 1990 Act appeals against decisions by the Social Welfare Committee may be lodged with the County Administrative Court if the Committee, *inter alia*, has made an order concerning access, pursuant to Section 31.

b. The Parental Code

Provisions concerning the enforcement of judgments and decisions concerning the custody of children are laid down in Chapter 21 of the Parental Code (*föräldrabalken*).

Section 7 of that Chapter of the Code reads:

(Translation)

> "Even when no judgment or decision as described in Section 1 exists [i.e. judgments by ordinary courts concerning custody, access to, or surrender of children], the child's guardian may, when the child is staying with someone else, request the County Administrative Court to have the child transferred to himself or herself.
>
> The County Administrative Court may refuse to take the measure requested if the best interests of the child require that the question of custody be examined by a general court.

A measure according to the first paragraph may not be decided if, according to [the 1990 Act], the guardian of the minor has been prohibited from taking the minor from a foster home. ...”

c. The Administrative Court Procedure Act

According to Section 33, subsection 2 of the 1971 Administrative Court Procedure Act (*förvaltningsprocesslagen*) a decision made by a county administrative court or an administrative court of appeal may be appealed against by a person whom the decision concerns, provided that the decision affects him adversely.

COMPLAINTS

1. The applicant complains that she has been subjected to inhuman and degrading treatment by the social authorities as from July 1994. She claims that the authorities have used threats and coercive measures against her.

2. The applicant also complains that she did not have a fair hearing by an impartial tribunal when T. was taken into public care. She argues that the courts based their decisions to take T. into public care on partial and misleading information supplied by the Social Welfare Committee.

3. Further, the applicant complains of the decision to take T. into care.

4. Finally, in her observations of 3 March 1998, the applicant complains that the public care of T. is, *de facto*, still continuing in spite of the courts' decisions in 1997 concerning public care and that she does not have access to an effective remedy. In this respect the applicant invokes Articles 8 and 13 of the Convention.

PROCEDURE

The application was introduced on 13 March 1996 and registered on 18 April 1996.

On 9 April 1997 the European Commission of Human Rights decided to communicate the applicant's complaint that T. was taken into public care to the respondent Government.

The Government's written observations were submitted on 26 June 1997, after an extension of the time-limit fixed for that purpose. The applicant replied on 22 August 1997 and 3 March 1998, also after an extension of the time-limit.

On 15 September 1998 the Commission granted the applicant legal aid.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

1. The applicant complains that she has been subjected to inhuman and degrading treatment by the social authorities as from July 1994 in that the authorities have used threats and coercive measures against her.

The Court has considered this part of the application under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, the Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30).

It is true that a particular treatment under certain circumstances may be considered degrading if it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 66–67, § 167). Moreover, it may be sufficient if the victim is humiliated in his or her own eyes (see the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 16, § 32).

The Court does not doubt that the proceedings instigated by the Social Welfare Committee in respect of the care of T. have aroused strong feelings in the applicant. This is an understandable, and not uncommon, reaction from a mother whose capacity to provide for her child is put in question. In these situations it is not unlikely that feelings of humiliation, fear, anguish or inferiority might occur. However, such reactions cannot in themselves be considered as reflecting a violation of Article 3.

In the light of the material before it the Court does not find that the applicant's situation discloses any appearance of actions attaining the level inherent in the notion of "inhuman or degrading treatment" as laid down in Article 3.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant complains that she did not have a fair hearing by an impartial tribunal when the courts decided on the matter of taking T. into public care.

The Court finds that the applicant hereby alleges a violation of Article 6 of the Convention which provides, so far as relevant, as follows:

> "1. In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law ..."

The Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Court has no competence to examine allegations concerning such errors except where, and to the extent that, they seem likely to have entailed a possible violation of any of the rights and freedoms set out in the Convention (see, for example, the Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, with further reference, to be published in *Reports of Judgments and Decisions* 1999).

In so far as an alleged violation of Article 6 of the Convention is concerned, the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings she was able to submit the arguments she considered relevant to her case. She was awarded legal counsel at the cost of the State. The factual and legal reasons for the first-instance and appellate courts' decisions were set out at length. No evidence has been offered to indicate that the applicant, notwithstanding these circumstances, was not granted a fair hearing.

In conclusion, the Court finds no appearance of a violation of Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant complains of the decision to take her daughter into care.

The Court finds that this complaint falls to be examined under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

The Government maintain that the taking into public care of T., which indeed constituted an interference with the applicant's rights under Article 8 of the Convention, was in accordance with law and had a legitimate aim, namely the protection of T.'s health and development.

As to the question whether this was necessary in a democratic society, the Government submit the following. Already a short time after T.'s birth, the Social Welfare Committee received a report indicating shortcomings in the applicant's care of T. The applicant was considered to be immature and to have difficulties in fully understanding her responsibilities as a parent and the needs of a small child. The applicant was provided with various support measures. However, additional considerable support was necessary. The applicant showed an

ambivalent attitude towards the various supporting measures given to her. Thus, her ability or strength to utilise voluntarily the immense support required was questioned. In order to secure such care for T., it was deemed necessary to place her outside her home with foster parents. Since the applicant did not consent to this, there was no other alternative than a care order under the 1990 Act. T. was in need of care even in 1997. The applicant then admitted that she lacked the ability to take care of T. without support and also that there was a risk that T. could get hurt if she was to be cared for in the applicant's home.

The Government adduce that the reasons for taking T. into care were clearly relevant and sufficient in order to meet with the prerequisite "pressing social need". Furthermore, the authorities involved saw no realistic alternative than a care order. The courts based their reasoning on direct contact with the applicant and on evidence given orally before them. The Government maintain that the interference with the applicant's rights under Article 8 of the Convention was proportionate to the aim pursued. Consequently, the care decision must be considered necessary for the purposes of Article 8. Taking all the circumstances into account the Government hold that the decision was justified and that no violation of Article 8 has occurred.

The applicant submits that she is orderly, normally developed and possesses average intellectual powers and that also T. is healthy and normally developed. She maintains that there were no reasons for taking T. into public care. There is therefore reason to criticise the conclusions of the report from the Children and Young People's Psychiatric Clinic at Umeå Hospital of 20 November 1996, not only because of the criticism of the applicant for not accepting the public care but also, and foremost, because of the abstract and occult accusations against her for not seeing and taking care of the needs of T.

The Court finds that the taking into public care of T. interfered with the applicant's right to respect for her family life as ensured by Article 8 § 1 of the Convention. It must therefore be examined whether this interference was justified under the terms of Article 8 § 2. In this respect, the Court recalls that three conditions must be satisfied: the interference must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in paragraph 2 and it must be "necessary in a democratic society" for that aim or those aims.

As regards the first condition, the Court finds that the relevant decisions were in conformity with Swedish law, namely Sections 1, 2 and 6 of the 1990 Act.

The Court further finds that the interference had a legitimate aim under Article 8 § 2, namely the interests of the child, which in this case fall under the expressions "for the protection of health or morals" and "for the protection of the rights and freedoms of others".

It thus remains to be determined whether the interference was "necessary in a democratic society" in the interests of the child.

According to the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Court furthermore has to take into account that a margin of appreciation is left to the Contracting States. However, the Court's review is not limited to ascertaining whether the respondent State has exercised its discretion reasonably, carefully and in good faith. Furthermore, it cannot confine itself to considering the relevant decisions in

isolation but must look at them in the light of the case as a whole. It must determine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (cf. the Olsson v. Sweden judgment of 24 March 1988, Series A no. 130, pp. 31–32, §§ 67–68).

In the present case, the Court recalls that the Administrative Court of Appeal, in its judgment of 31 May 1995, found that serious shortcomings existed in the care of T. as regarded the applicant's ability to communicate and be emotionally approachable as well as her ability to console and that those shortcomings presumably would lead to a clear risk to T.'s health and development. The court further found that the applicant still would require considerable support for a long period of time. As concerns the applicant's ability to meet T.'s care needs with the help of supporting measures it was noted that the applicant had shown immaturity and dependence on others and also an ambivalent attitude towards the various supporting measures. Against this background the court found that there was reason to assume that the applicant did not possess the ability or the strength to utilise voluntarily the immense support required to give T. the necessary care. Instead, in order to secure such care for T., it would probably be necessary to place her outside her home. As the applicant did not consent to this and there were such deficiencies in the care of T. that there was a clear risk of her health and development being impaired, the requisite circumstances were deemed to exist for T. to be taken into care under the provisions of the 1990 Act. The Court further notes that T.'s own counsel recommended that T. be taken into care.

The Court also takes into account that the Administrative Court of Appeal, before giving its judgment, had held a hearing at which the applicant, her counsel, T.'s counsel, representatives of the Social Welfare Committee and several witnesses were heard. Thus, the court cannot be said to have drawn its conclusions and intervened without adequate knowledge of the case.

In the light of the foregoing considerations, the Court finds that the decision to take T. into public care was supported by relevant and sufficient reasons and that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to believe that it was necessary to take T. into care. Accordingly, the Court concludes that the relevant decisions can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

4. The applicant finally complains that still T. has not been reunited with her.

The applicant maintains that this situation constitutes a violation of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The applicant maintains that she has no effective remedy against a development controlled by social welfare officers, aiming at separating her from T. In practice, the care of T. is, although *pro forma* voluntary, still compulsory by nature. If the applicant decided to

remove T. from the foster home, the Social Welfare Committee would, allegedly, take T. into immediate care according to the 1990 Act. A court order – pursuant to Chapter 21, Section 7 of the Parental Code – would most likely also be followed by such a decision. If this is not successful, the Committee would issue a temporary removal prohibition under the 1990 Act. Hereby, the Committee could substantially delay the reunion of the applicant and T.

The Court notes that, as a result of the decision made by the Administrative Court of Appeal on 24 February 1997, T. is no longer in public care pursuant to the 1990 Act but placed with foster parents in agreement with the applicant. Hence, there is no legal obstacle as such preventing the applicant from bringing T. into her own care. Furthermore, should she eventually pursue such a wish, the Court does not find it established that she would not, under Swedish law, have recourse to effective remedies within the meaning of Article 13 of the Convention should such a move be opposed by public authorities in a manner which might be in conflict with her rights under the Convention. In this respect the Court has regard to the possibility for a child's guardian to apply for a court order on the transfer of the child under the provisions of Chapter 21, Section 7 of the Parental Code, and to the fact that the validity of a removal prohibition and a temporary removal prohibition issued by the Social Welfare Committee under the provisions of the 1990 Act shall always be reviewed by a court of law.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President